

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1553

AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section, "independent contractor" refers to a person described in IC 22-3-6-1(b)(7) or **IC 22-3-7-9(b)(5)**.

(b) As used in this section, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

(c) An independent contractor who does not make an election under:

(1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the compensation provisions of IC 22-3-2 through IC 22-3-6; or

(2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the compensation provisions of IC 22-3-7;

and must file a statement with the department with supporting documentation of independent contractor status and obtain a certificate of exemption under this section.

(d) An independent contractor shall file with the department, in the form prescribed by the department, a statement providing the following information:

(1) The independent contractor's name, trade name, address, and telephone number.

(2) The independent contractor's federal identification



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number or Social Security number.

(3) The name and:

(A) Social Security number;

(B) federal employer identification number (FEIN); or

(C) taxpayer identification number (TIN);

of each person or entity with whom the independent contractor has contracted.

(e) Along with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

(f) An independent contractor shall pay a filing fee of five dollars (\$5) with the statement required in subsection (d). The fees collected under this subsection shall be deposited into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department for its use in carrying out the purposes of this section.

(g) The department shall keep each statement and supporting documentation received under this section on file and on request may verify that a certificate of exemption is on file.

(h) The certificate of exemption required by this section must be on a form prescribed and provided by the department. A certificate issued under this section is valid for one (1) year. The department shall maintain the original certificate on file.

(i) A certificate of exemption must certify the following information:

(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with IC 22-3-2 through IC 22-3-7.

(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.

(j) The department shall provide the certificate of exemption to the person requesting it not less than seven (7) business days after verifying the accuracy of the supporting documentation. To be given effect, a certificate of exemption must be filed with the worker's compensation board of Indiana in accordance with

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IC 22-3-2-14.5(f) and IC 22-3-7-34.5(g).

(k) Not more than thirty (30) days after the department receives a ~~copy of an independent contractor's statement and validated affidavit from the worker's compensation board under IC 22-3-2-14.5 or IC 22-3-7-34.5,~~ **supporting documentation and issues a certificate of exemption,** the department shall provide the independent contractor with an explanation of the department's tax treatment of independent contractors and the duty of the independent contractor to remit any taxes owed.

~~(c)~~ **(l)** The information received from an independent contractor's statement and ~~validated affidavit~~ **supporting documentation** is to be treated as confidential by the department and is to be used solely for the purposes of this section.

(m) A contractor who knowingly or intentionally causes or assists employees, including temporary employees, to file a false statement and supporting documentation of independent contractor status commits a Class D felony.

SECTION 2. IC 22-3-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) **As used in this section, "person" does not include an owner who contracts for performance of work on the owner's owner occupied residential property.**

(b) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, or person, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value by a contractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without exacting from such contractor a certificate from the worker's compensation board showing that such contractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

~~(b)~~ **(c)** Any contractor who shall sublet any contract for the performance of any work, to a subcontractor subject to the compensation provisions of IC 22-3-2 through IC 22-3-6, without obtaining a certificate from the worker's compensation board showing that such subcontractor has complied with section 5 of this chapter, IC 22-3-5-1, and IC 22-3-5-2, shall be liable to the same extent as such subcontractor for the payment of compensation, physician's fees,

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hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

~~(c)~~ (d) The state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, person, or contractor paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under this section may recover the amount paid or to be paid from any person who, independently of such provisions, would have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

~~(d)~~ (e) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection ~~(a)~~, (b), shall fix the order in which said parties shall be exhausted, beginning with the immediate employer, and, in an award under subsection ~~(b)~~, (c), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 3. IC 22-3-2-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. (a) As used in this section, "independent contractor" refers to a person described in IC 22-3-6-1(b)(7).

(b) As used in this section, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

(c) An independent contractor who does not make an election under IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the compensation provisions of IC 22-3-2 through IC 22-3-6 and must file a statement **with the department of state revenue in accordance with IC 6-3-7-5** and obtain a **validated affidavit certificate** of exemption. ~~under this section.~~

~~(d)~~ An independent contractor shall file with the worker's compensation board, in the form prescribed by the worker's compensation board, a statement providing the following information:

- (1) The independent contractor's name, trade name, address, and telephone number.
- (2) The independent contractor's federal identification number or



Social Security number.

(d) Together with the statement required in subsection (c), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

(e) An independent contractor shall pay a filing fee in the amount of five dollars (\$5) **fifteen dollars (\$15)** with the statement required in **certificate filed under** subsection (d): **(g)**. The fees collected under this subsection shall be deposited as follows: **(1) Fifty percent (50%)** in the worker's compensation supplemental administrative fund **and shall be used for all expenses the board incurs.**

(2) Fifty percent (50%) into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department of state revenue for its use in carrying out the purposes of IC 6-3-7-5.

(f) The worker's compensation board shall **keep each statement maintain a data base consisting of certificates** received under this section **on file** and on request may verify that a **validated affidavit is on file: certificate was filed.**

(g) The affidavit of exemption required by this section must be on a form prescribed and provided by the worker's compensation board. An affidavit issued under this section is valid for one **(1) year.**

(h) An affidavit of exemption must certify the following information:

(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with IC 22-3-2 through IC 22-3-6.

(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.

(i) (g) An affidavit A certificate of exemption must be filed with the worker's compensation board. The board shall **validate the affidavit indicate that the certificate has been filed** by stamping the affidavit **certificate** with the date of receipt and returning a **validated stamped** copy to the person **executing the affidavit. A validated affidavit filing the certificate. A certificate** becomes effective as of midnight **on the date received: seven (7) business days after the date file stamped by the worker's compensation board.** The board shall maintain the

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original affidavits filed and validated by the board: a data base containing the information required in subsections (d) and (f).

(j) Not more than thirty (30) days after the worker's compensation board receives an independent contractor's statement, validated affidavit, and filing fee required by this section, the worker's compensation board shall provide the department of state revenue with a copy of the statement and validated affidavit.

(k) (h) A person who contracts for services of another person not covered by IC 22-3-2 through IC 22-3-6 to perform work must secure a copy of a validated affidavit issued stamped certificate of exemption filed under this section from the person hired. A person may not require a person who has provided a validated affidavit stamped certificate to have worker's compensation coverage. The worker's compensation insurance carrier of a person who contracts with an independent contractor shall accept a validated affidavit stamped certificate in the same manner as a certificate of insurance.

(l) (i) An affidavit validated A stamped certificate filed under this section is binding on and holds harmless from all claims:

- (1) a person who contracts with an independent contractor after receiving a copy of the validated affidavit; stamped certificate; and
- (2) the worker's compensation insurance carrier of the person who contracts with the independent contractor.

The independent contractor may not collect compensation under IC 22-3-2 through IC 22-3-6 for an injury from a person or the person's worker's compensation carrier to whom the independent contractor has furnished a validated affidavit: stamped certificate.

SECTION 4. IC 22-3-3-5.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5.2. (a) A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation:

- (1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.
- (2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.



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(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(4) The billing review standard shall include the billing charges of all hospitals in the applicable community for the service or product.

(b) A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) coding change. The request must be made not later than sixty (60) days after receipt of the notice of the reduction. If a request is made, the billing review service must provide:

- (1) the name of the billing review service used to make the reduction;
- (2) the dollar amount of the reduction;
- (3) the dollar amount of the medical service at the eightieth percentile; and
- (4) in the case of a CPT coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

(c) If after a hearing the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection (a)(1) through (a)(4) in determining the pecuniary liability of an employer or an employer's insurance carrier for a health care provider's charge for services or products covered under worker's compensation, the worker's compensation board may assess a civil penalty against the billing review service in an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

SECTION 5. IC 22-3-13, AS AMENDED BY P.L.235-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.



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(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally **impaired disabled** by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent ~~impairment~~ **disability** out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice not later than October 1 in any year to:

- (1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and
- (2) each employer carrying the employer's own risk;

stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed ~~one and one-half percent (1.5%)~~ **two and one-half percent (2.5%)** of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment

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allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than ~~one and one-half percent (1.5%)~~ **two and one-half percent (2.5%)** of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. **The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.**

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the

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fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

- (1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or
- (2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

- (1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and
- (2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

- (1) not later than January 31 each calendar year; and**
- (2) not later than thirty (30) days after a change occurs;**

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 6. IC 22-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The worker's compensation

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supplemental administrative fund is established for the purpose of carrying out the administrative purposes and functions of the worker's compensation board. The fund consists of fees collected from employers under sections 1 through 2 of this chapter and from fees collected under IC 22-3-2-14.5 and IC 22-3-7-34.5. The fund shall be administered by the worker's compensation board. Money in the fund is annually appropriated to the worker's compensation board ~~for its use in carrying out the administrative purposes and functions of~~ **and shall be used for all expenses incurred by** the worker's compensation board.

(b) The money in the fund is not to be used to replace funds otherwise appropriated to the board. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 7. IC 22-3-6-1, AS AMENDED BY P.L.31-2000, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent ~~or a subsidiary of a corporation or a lessor of employees and its subsidiaries~~ shall each be considered ~~to be the joint employer~~ **employers** of the corporation's, ~~the lessee's, or the lessor's the parent's, or the subsidiaries'~~ employees for purposes of IC 22-3-2-6 **and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31.** If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in

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accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

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(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is

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employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be

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followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.



(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 22-3-7-9, AS AMENDED BY P.L.31-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent ~~or a subsidiary of a corporation or a lessor of employees and its subsidiaries shall each be considered to be the employer joint employers of the corporation's, the lessee's, or the lessor's the parent's, or the subsidiaries' employees for purposes of section sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter.~~ The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes his insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer.

(b) As used in this chapter, "employee" means every person,

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including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes his legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include himself as an employee under this chapter if he is actually engaged in the proprietorship business. If the owner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under ~~IC 22-3-7-34.5~~ **section 34.5 of this chapter.**

(3) A partner in a partnership may elect to include himself as an employee under this chapter if he is actually engaged in the partnership business. If a partner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under ~~IC 22-3-7-34.5~~ **section 34.5 of this chapter.**

(4) Real estate professionals are not employees under this chapter if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

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(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, his parents, his personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter

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does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of his occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to his employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within

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thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

- (1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or
- (2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.
- (7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.
- (8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a

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person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 9. IC 22-3-7-17.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 17.2. (a) A billing review service shall adhere to the following requirements to determine the pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under this chapter:

(1) The formation of a billing review standard, and any subsequent analysis or revision of the standard, must use data that is based on the medical service provider billing charges as submitted to the employer and the employer's insurance carrier from the same community. This subdivision does not apply when a unique or specialized service or product does not have sufficient comparative data to allow for a reasonable comparison.

(2) Data used to determine pecuniary liability must be compiled on or before June 30 and December 31 of each year.

(3) Billing review standards must be revised for prospective future payments of medical service provider bills to provide for payment of the charges at a rate not more than the charges made by eighty percent (80%) of the medical service providers during the prior six (6) months within the same community. The data used to perform the analysis and revision of the billing review standards may not be more than two (2) years old and must be periodically updated by a representative inflationary or deflationary factor. Reimbursement for these charges may not exceed the actual charge invoiced by the medical service provider.

(4) The billing review standard shall include the billing charges of all hospitals in the applicable community for the service or product.

(b) A medical service provider may request an explanation from a billing review service if the medical service provider's bill has been reduced as a result of application of the eightieth percentile or of a Current Procedural Terminology (CPT) coding change. The request must be made not later than sixty (60) days after receipt of the notice

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of the reduction. If a request is made, the billing review service must provide:

- (1) the name of the billing review service used to make the reduction;
- (2) the dollar amount of the reduction;
- (3) the dollar amount of the medical service at the eightieth percentile; and
- (4) in the case of a CPT coding change, the basis upon which the change was made;

not later than thirty (30) days after the date of the request.

(c) If after a hearing the worker's compensation board finds that a billing review service used a billing review standard that did not comply with subsection (a)(1) through (a)(4) in determining the pecuniary liability of an employer or an employer's insurance carrier for a health care provider's charge for services or products covered under occupational disease compensation, the worker's compensation board may assess a civil penalty against the billing review service in an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

SECTION 10. IC 22-3-7-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34. (a) **As used in this section, "person" does not include an owner who contracts for performance of work on the owner's owner occupied residential property.**

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

~~(b)~~ **(c)** Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection ~~(a)~~; **(b)**, shall:

- (1) insure and keep insured the employer's liability under this



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chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

~~(c)~~ (d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection ~~(b)~~ (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

~~(d)~~ (e) Whenever an employer has complied with subsection ~~(b)~~ (c) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

~~(e)(1)~~ (f)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

~~(e)(2)~~ (f)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered



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or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

~~(f)(1)~~ **(g)(1)** No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

~~(f)(2)~~ **(g)(2)** All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

~~(f)(3)~~ **(g)(3)** Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

~~(f)(4)~~ **(g)(4)** Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits.

(C) Between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the

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insured (the employer) shall be notice or knowledge thereof, on the part of the insurer. The jurisdiction of the insured (the employer) for the purpose of this chapter is the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments and decrees rendered against the insured (the employer) under this chapter.

(D) This insurer will promptly pay to the person entitled to the same all benefits conferred by this chapter, including all physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under this chapter. The obligation of this insurer shall not be affected by any default of the insured (the employer) after disablement or by any default in giving of any notice required by this policy, or otherwise. This policy is a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital services, charges for hospital supplies, charges for burial, compensation, or death benefits, and shall be enforceable in the name of the person.

(E) Any termination of this policy by cancellation shall not be effective as to employees of the insured covered hereby unless at least thirty (30) days prior to the taking effect of such cancellation, a written notice giving the date upon which such termination is to become effective has been received by the worker's compensation board of Indiana at its office in Indianapolis, Indiana.

(F) This policy shall automatically expire one (1) year from the effective date of the policy, unless the policy covers a period of three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy. The termination either of a one (1) year or a three (3) year policy, is effective as to the employees of the insured covered by the policy."

~~(F)(5)~~ (g)(5) All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both.

~~(F)(6)~~ (g)(6) If any insurer shall fail to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail to comply with this chapter, the worker's compensation board shall revoke the approval of its policy forms, and shall not accept any further proofs of insurance from it until

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it shall have paid the award or judgment or complied with this chapter, and shall have resubmitted its policy form and received the approval of the policy by the industrial board.

~~(g)~~ **(h)** No policy of insurance covering the liability of an employer for worker's compensation shall be construed to cover the liability of the employer under this chapter for any occupational disease unless the liability is expressly accepted by the insurance carrier issuing the policy and is endorsed in that policy. The insurance or security in force to cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

~~(h)~~ **(i)** For the purpose of complying with subsection ~~(b)~~, **(c)**, groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. This subsection does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.

~~(i)~~ **(j)** Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection ~~(b)~~, **(c)**.

~~(j)~~ **(k)** Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections ~~(a)~~, ~~(b)~~, and ~~(c)~~, **(b)**, **(c)**, and **(d)**, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

~~(k)~~ **(l)** Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections ~~(a)~~, ~~(b)~~, and ~~(c)~~, **(b)**, **(c)**, and **(d)**, is liable to the same

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extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(~~h~~) (m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection (~~j~~) (k) or (~~k~~) (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(~~m~~) (n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (~~j~~) (k), shall fix the order in which such parties shall be exhausted, beginning with the immediate employer and, in an award under subsection (~~k~~) (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 11. IC 22-3-7-34.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34.5. (a) As used in this section, "independent contractor" refers to a person described in ~~IC 22-3-7-9(b)(5)~~: **section 9(b)(5) of this chapter**.

(b) As used in this section, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

(c) An independent contractor who does not make an election under ~~IC 22-3-7-9(b)(2)~~ **section 9(b)(2) of this chapter** or ~~IC 22-3-7-9(b)(3)~~ **section 9(b)(3) of this chapter** is not subject to the compensation provisions of this chapter and must file a statement **with the department of state revenue** and obtain a **validated affidavit certificate** of exemption. ~~under this section~~.

(d) An independent contractor shall file with the ~~worker's compensation board~~; **department of state revenue**, in the form prescribed by the ~~worker's compensation board~~; **department of state revenue**, a statement ~~providing the following information~~:

- (1) ~~The independent contractor's name, trade name, address, and telephone number.~~
- (2) ~~The independent contractor's federal identification number or~~



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~~Social Security number.~~

containing the information required by IC 6-3-7-5.

(e) Together with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

~~(e)~~ (f) An independent contractor shall pay a filing fee in the amount of ~~five dollars (\$5)~~ **fifteen dollars (\$15)** with the ~~statement required in certificate filed under subsection (d).~~ (h). The fees collected under this subsection shall be deposited as follows:

(1) ~~Fifty percent (50%)~~ in the worker's compensation supplemental administrative fund **and shall be used for all expenses the board incurs.**

(2) Fifty percent (50%) into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department of state revenue for its use in carrying out the purposes of IC 6-3-7-5.

~~(f)~~ (g) The worker's compensation board shall ~~keep each statement maintain a data base consisting of certificates~~ received under this section on file and on request may verify that a ~~validated affidavit is on file.~~ **certificate was filed.**

(g) The affidavit of exemption required by this section must be on a form prescribed and provided by the worker's compensation board. An affidavit issued under this section is valid for one (1) year.

(h) An affidavit of exemption must certify the following information:

(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with this chapter.

(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.

~~(i)~~ (h) ~~An affidavit~~ **A certificate** of exemption must be filed with the worker's compensation board. The board shall ~~validate the affidavit indicate that the certificate has been filed~~ by stamping the ~~affidavit certificate~~ with the date of receipt and returning a ~~validated stamped~~ copy to the person ~~executing the affidavit.~~ **A validated affidavit filing the certificate.** A certificate becomes effective as of midnight on the

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~~date received: seven (7) business days after the date file stamped by the worker's compensation board.~~ The board shall maintain the original affidavits filed and validated by the board: **a data base containing information required in subsections (e) and (g).**

~~(j) Not more than thirty (30) days after the worker's compensation board receives an independent contractor's statement; validated affidavit; and filing fee required by this section; the worker's compensation board shall provide the department of state revenue with a copy of the statement and validated affidavit.~~

~~(k) (i)~~ **(i)** A person who contracts for services of another person not covered by this chapter to perform work must secure a copy of a **validated affidavit issued stamped certificate of exemption filed** under this section from the person hired. A person may not require a person who has provided a **validated affidavit stamped certificate** to have worker's compensation coverage. The worker's compensation insurance carrier of a person who contracts with an independent contractor shall accept a **validated affidavit stamped certificate** in the same manner as a certificate of insurance.

~~(j) An affidavit validated~~ **(j) A stamped certificate filed** under this section is binding on and holds harmless for all claims:

- (1) a person who contracts with an independent contractor after receiving a copy of the **validated affidavit stamped certificate**; and
- (2) the worker's compensation insurance carrier of the person who contracts with the independent contractor.

The independent contractor may not collect compensation under this chapter for an injury from a person or the person's worker's compensation carrier to whom the independent contractor has furnished a **validated affidavit: stamped certificate.**

SECTION 12. IC 27-7-2-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34. The management of the bureau shall furnish to all members of the bureau complete information concerning each rejected risk and any member of such bureau may write any rejected risk as regular business in which event the risk so written shall no longer be treated as provided for in section 29 of this chapter. ~~The bureau shall; at least ninety (90) days prior to expiration; investigate such rejected risk as to its classifications; rates; accident record; attitude toward accident prevention; financial standing; and other matters pertinent to such risk: Sixty (60) days prior to the expiration date of such risk; the bureau shall bulletin all members of the bureau giving results of the investigation and the rates to become effective upon expiration of the current policy: If, at expiration, the risk~~



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is still uninsured on voluntary basis, it shall automatically be insured as provided in section 29 of this chapter.

SECTION 13. [EFFECTIVE JULY 1, 2001] (a) Notwithstanding IC 6-3-7-5(e), as amended by this act, if an independent contractor has filed an affidavit of exemption under IC 22-3-2-14.5(g) or IC 22-3-7-34.5(h), both as amended by this act, for calendar year 2001 before July 1, 2001, and has received a validated copy from the worker's compensation board, the independent contractor is not required to file additional documentation for 2001.

(b) This SECTION expires January 1, 2003.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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